

In Illinois, lessors of tangible personal property are deemed end users of the leased property. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

June 25, 1999

Dear Xxxxx:

This letter is in response to your letter dated May 26, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing to request relief from 'duplicate sales tax' on the purchase of my current leased vehicle (1997 Honda Civic). I have been leasing the vehicle from COMPANY since November, 1996, and recently decided that I would like to exercise my option to purchase the vehicle from COMPANY. Much to my dismay, I was informed that I would be required to pay sales tax (again) on the entire purchase price of the vehicle. I understand that such taxation if **anyone other than the 'leasee'** were to purchase the vehicle from COMPANY; however I have already paid sales tax as part of the lease agreement. In addition, please consider that I have leased the above referenced vehicle for my personal use, and have not been able to 'expense' or 'write off' any portion of the lease payment, at anytime, on my state or federal income taxes.

Since the State of Illinois has already received fair and adequate sale tax on this vehicle, I am confident that you will agree that additional/duplicate sales tax on the above referenced vehicle should not be required. If I can be of further assistance as you review my request, please contact me at ####. In the meantime, thank you for your time and consideration, and I look forward to hearing from you very soon.

We understand your consternation resulting from your recent purchase of a used motor vehicle coming off lease. However, the tax treatment did not constitute double taxation because over the life of this vehicle there were two separate sales transactions that were taxed.

The original purchase of the vehicle by the lessor constituted the first sales transaction and was subject to Use Tax liability on the part of the lessor because lessors of tangible personal property under true leases in Illinois are deemed end users of the leased property. Please see the enclosed copy of 86 Ill. Adm. Code 130.2010. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. Under Illinois law, lessors may not "pass through" their

June 25, 1999

tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

A second separate transaction took place that was subject to the Retailers' Occupation Tax when the vehicle was subsequently sold, either by the lessor or a dealer. Lessors or rentors of motor vehicles are considered to be retailers when they sell automobiles coming off lease. Section 1c of the Retailers' Occupation Tax Act (35 ILCS 120/1c) provides, in part, that "[a] person who is engaged in the business of leasing or renting motor vehicles to others and who, in connection with such business sells any used motor vehicle to a purchaser for his use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail." Therefore, when lessors sell automobiles coming off lease to purchasers, the lessors will incur Retailers' Occupation Tax liability on the gross receipts from such sales. Please see 86 Ill. Adm. Code 130.111, enclosed. Their Illinois purchasers incur the corresponding Use Tax liability.

In summary, there are different tax consequences under Illinois sales tax laws that can apply to sales of motor vehicles depending upon the facts of the particular transactions. These results are due to the current statutory provisions that the Illinois General Assembly has enacted.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

Enc.